

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 625 of 1997

in

SPECIAL CIVIL APPLICATION No 2860 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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COLLECTOR

Versus

SHIV CORPORATION

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Appearance:

Mr. T.H.Sompura, Asstt. GOVERNMENT PLEADER for Petitioner  
MR YN OZA for Respondent No. 1

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE S.D.PANDIT

Date of decision: 20/08/97

ORAL JUDGEMENT

Admitted. Mr. Y.N.Oza, learned counsel for the respondent waives service of notice of admission. In the facts and circumstances of the case, the matter is taken up for final hearing today.

2. This appeal is filed against an interim

order passed by the learned Single Judge in Special Civil Application NO. 2860 of 1997 on May 8,1997. The said order reads;

"Heard learned advocate Mr. P.K.Jain for petitioner and Ms. Harsha Devani, learned A.G.P. for respondent. Perused papers.

Mr. Jani for the petitioner has produced a copy of the letter dated 6.5.1997 received from Divisional Railway Manager, Western Railway, Rajkot, granting permission to make construction on the right side of Palanpur-Ahmedabad Broad guage from KM 716-14 to 716-15. Mr. Jani states that the Competent Authority has sanctioned the plan and the construction work would be made strictly in accordance with the same. The petitioner has also produced an undertaking to that effect before the Competent Authority, copy whereof is annexed at page 37. He further states that the petitioner has also applied to the Collector for revised N.A.permission for commercial use. Under these circumstances, operation of the show cause notice at Annexure "F" dated 2.4.1997 is stayed on condition that the petitioner shall file an undertaking in this Court on the line of the undertaking filed before the Competent Authority, Annexure E at page 37 that the petitioner shall not claim any equity in the event of losing in this petition. The petitioner is also directed to supply copy of plan duly sanctioned by the Competent Authority to the Collector. After making construction the petitioner is likely to allot to third parties. Therefore, while allotting to third parties the petitioner shall also obtain from them an undertaking on the line on which undertaking is to be furnished by the petitioner before this Court in the event the petitioner losing in the petition, even allottees not claim any equity. Fact about pendency of the petition and the show cause notice issued should also be brought to the notice of all the allottees.

Direct service is permitted."

3. Being aggrieved by the above interim order passed by the learned Single Judge, the Collector has filed this appeal. We had issued notice on appeal as

well as on Civil Application by making it reutrnable on July 8,1997. Ad-interim relief against the order passed by the learned Single Judge was also granted.

4. Mr. Sompura, learned Assistant Government Pleader submitted that the petition was filed at premature stage. Merely a show cause notice was issued by the Collector alleging that the construction which was to be made by the respondent was contrary to law. He was called upon to remain present, if he wanted to say anything in the matter. Meanwhile, however, further construction was stayed. At that stage, the respondent approached this Court. The learned Single Judge issued notice. The matter is not even admitted and the learned Single Judge by the impugned order, not only granted permission to make further construction, but also permitted the respondent to dispose of property by taking an undertaking that in case the petition will be dismissed, petitioner as well as allottees would abide by the final order to be passed in Special Civil Application. The learned Assistant Government pleader contends that when the petition is entertained at the show cause notice stage, which according to him, is premature, and the petition is still not admitted, the learned Single Judge ought not to have granted permission to make construction and also to induct third party. We find considerable force in the argument of the learned AGP.

5. In the facts and circumstances of the case and without entering into merits of the matter, we are of the view that this LPA as well as Special Civil Application must be disposed of by extending opportunity to the respondent-original petitioner in Special Civil Application NO.2860 of 1997 to approach the Collector who has issued notice. The Collector will afford hearing to the petitioner and will pass an appropriate order in accordance with law. It is directed that in the meanwhile, status quo as on today will be maintained. No further construction will be made or equities will be created by the petitioner. At the same time, the Collector will not demolish or cause to be demolished any part of construction which has already been made. In the facts and circumstances of the case, it is also directed that the Collector will decide the matter as expeditiously as possible, preferably before 15th September, 1997.

6. In view of our order passed in this LPA, obviously Special Civil Application will also not survive and as and when the matter will be placed before the

learned Single Judge, appropriate order will be passed. We may clarify that we are not expressing any opinion, one way or the other on merits of the matter and as and when the matter will be taken up by the Collector, an appropriate order will be passed by him in accordance with law on its own merits.

The appeal is accordingly partly allowed with no order as to costs.

(C.K.Thakkar,J)

(S.D.Pandit,J)